

In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 4740 of 2006(O&M)
Date of decision:8-09-2006

Siri Kishan

.....Petitioner

Versus

Dharampal and others

.....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Puneet Bassi, Advocate, for the petitioner.

VINOD K.SHARMA,J. (ORAL)

The present revision petition has been filed against the order dated 01-8-2006 passed by the Civil Judge (Junior Division), Gurgaon, dismissing the application moved by the plaintiff-petitioner under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment of the plaint. By way of present amendment, the plaintiff-petitioner sought to incorporate the following averment:-

That despite the pendency of partition proceedings & even pendency of this present suit the defendant No.1 without any hesitation is raising construction and completed the house under the shadow of alleged Mandir and alleged Dharamshala in the month of August 2004 by taking the benefit of non-issuance of stay order from competent court of law, while he has no right to do so.

The amendment was further sought to incorporate the words “not to construct and restore the possession by removing the construction/encroachment raised by him.” and the words “mode of partition” were also sought to be amended with the words “Naksa Bay.”

The plea of the petitioner is that amendment sought is necessary due to subsequent events.

The learned Court below came to the conclusion that it was the specific stand of the respondent-defendant No.1 that the construction had been raised by him. The trial Court further came to the conclusion that while disposing of application of injunction, it was so mentioned that the construction will be subject to partition proceedings, which means that the trial Court has allowed the construction to continue. In view of this, there is hardly any ground to allow amendment of the suit especially when the rights of the parties have to be determined in the partition proceedings. There is no error in exercise of jurisdiction by the Court below which may call for interference by this Court.

Dismissed.

**08-9-2006,
'dls'**

**(VINOD K.SHARMA)
JUDGE**